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June 2, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the Third
Antidumping Duty Administrative Review: Emulsion Styrene
Butadiene Rubber from Brazil; 2019-2020

I. SUMMARY

The Department of Commerce (Commerce) is conducting the third administrative review of the antidumping duty (AD) order on emulsion styrene butadiene rubber (ESB rubber) from Brazil in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. The period of review (POR) is September 1, 2019, through August 31, 2020. The review covers one producer/exporter of the subject merchandise, ARLANXEO Brasil S.A. (ARLANXEO Brasil), which did not participate in this review. Commerce has preliminarily assigned a dumping margin to ARLANXEO Brasil, based upon the application of adverse facts available (AFA).

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results of review. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we will issue the final results of review no later than 120 days after the publication of these preliminary results of review.

II. BACKGROUND

On September 1, 2020, Commerce published a notice of opportunity to request an administrative review of the AD order on ESB rubber from Brazil.¹ On September 24, 2020, Lion Elastomers LLC (the petitioner) timely requested that Commerce conduct a review of ARLANXEO Brasil's

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 54349 (September 1, 2020).



exports during the POR.² Pursuant to this request, on October 30, 2020, Commerce published in the *Federal Register* the *Initiation Notice*.³ On November 19, 2020, Commerce issued the AD questionnaire to the sole mandatory respondent, ARLANXEO Brasil.⁴ ARLANXEO Brasil received Commerce's AD Questionnaire but did not respond to the questionnaire.⁵

The deadline for the preliminary results of this review is June 2, 2021.

III. SCOPE OF THE ORDER

The product covered by this order is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the order includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the order covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber."

Specifically excluded from the scope of this order are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this order are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts available with adverse inferences is appropriate for determining the margin of ARLANXEO Brasil in these preliminary results.

² See Petitioner's Letter, "Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Brazil: Request for Administrative Review," dated September 24, 2020.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 68840 (October 30, 2020) (*Initiation Notice*).

⁴ See Commerce's Letter, Initial AD Questionnaire, dated November 19, 2020 (AD Questionnaire).

⁵ See Memorandum, "Antidumping Administrative Review of Emulsion Styrene-Butadiene Rubber from Brazil: FedEx Delivery Confirmation," dated January 28, 2021 (indicating that ARLANXEO Brasil received the AD Questionnaire on November 20, 2020).

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Finally, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

As noted above, ARLANXEO Brasil received Commerce's AD Questionnaire but did not respond to the questionnaire.⁶ As ARLANXEO Brasil did not provide the requested information, we also find that necessary information is not available on the record, pursuant to section 776(a)(1) of the Act. ARLANXEO Brasil also withheld information requested by Commerce, failed to provide the requested information in the form and manner requested, and thus, significantly impeded the proceeding. As a result, the use of facts available under sections 776(a)(2)(A)-(C) of the Act is warranted.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate

⁶ *Id.*

than if it had cooperated fully.”⁷ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁸ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁹

We preliminarily find that ARLANXEO Brasil has failed to cooperate by not acting to the best of its ability in declining to respond to our questionnaire. Therefore, in accordance with section 776(b) of the Act, we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.¹⁰

C. Selection and Corroboration of the AFA Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.¹¹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹²

When using facts otherwise available, section 776(c)(1) of the Act provides that, except as provided under section 776(c)(2) of the Act, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information

⁷ See Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 (1994) (SAA) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁸ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (Preamble).

⁹ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

¹⁰ See, e.g., *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 55559 (October 17, 2019), and accompanying Preliminary Decision Memorandum, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 85 FR 21827 (April 20, 2020); *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

¹¹ See 19 CFR 351.308(c).

¹² See SAA at 870.

derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹³ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.¹⁴ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.¹⁵ Under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.¹⁶ The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹⁷ When assigning adverse rates in a review, Commerce’s practice, consistent with section 776(d)(2) of the Act, is to select as AFA the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated rate for any respondent from any segment of the proceeding.

Thus, for purposes of this review, we preliminarily are applying the highest dumping margin alleged in the petition, 67.99 percent, to establish the weighted-average dumping margin for ARLANXEO Brasil based on AFA. Consistent with section 776(d)(2) of the Act, this rate is the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated rate for any respondent from a completed segment of the proceeding. Because this AFA rate is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

There are no other cooperative mandatory respondents in this review, and thus, there is no information available on the record of this review for use in corroborating the highest dumping margin alleged in the petition. Thus, for purposes of corroboration, we examined evidence supporting the calculations of the highest dumping margin alleged in the petition.¹⁸ As is Commerce’s practice, during the LTFV investigation pre-initiation analysis we examined: (1) the information used as the basis for export price and normal value in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent

¹³ *Id.*

¹⁴ *Id.*; see also 19 CFR 351.308(d).

¹⁵ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁶ See section 776(d)(1)-(2) of the Act.

¹⁷ See sections 776(d)(3)(A) and (B) of the Act.

¹⁸ See Memorandum, “Emulsion Styrene Butadiene Rubber from Brazil: Information Examined in Corroboration of the Margin Based on Adverse Facts Available for the Preliminary Determination,” dated concurrently with this memorandum (Preliminary Corroboration Information Memorandum).

sources provided in the petition.¹⁹ We determine that the highest margin of 67.99 percent is reliable, where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition as reflected in the Initiation Checklist from the investigation.²⁰ In addition, we obtained no other information in this review that would cause us to question the validity of the information supporting the relevance or reliability of the petition rate. Accordingly, we consider the margin of 67.99 percent to be reliable and relevant for purposes of assigning an AFA rate to ARLANXEO Brasil in this administrative review.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

6/2/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance

¹⁹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017); see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391 (November 6, 1996).

²⁰ See *Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 55438 (August 19, 2016), and accompanying Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from Brazil (Initiation Checklist); see also Preliminary Corroboration Information Memorandum.